

In the Supreme Court of the United States.

OCTOBER TERM, 1905.

THE UNITED STATES, APPELLANT,
v.
THE CHEROKEE NATION. } No. 346.

THE EASTERN CHEROKEES, APPELLANT,
v.
THE CHEROKEE NATION. } No. 347.

THE CHEROKEE NATION, APPELLANT,
v.
THE UNITED STATES. } No. 348.

MOTION TO ADVANCE.

Now comes the Solicitor-General, on behalf of the United States, and moves the court to advance the above-entitled causes on the docket and assign the same for argument at an early day convenient to the court.

The controversy between the United States and the Cherokee Indians involved in these causes which arises under various treaties has been actively waged by the Indians for many years past. It relates principally to amounts paid for the removal of Eastern Cherokees to the Indian Territory, improperly charged to the treaty fund, and to interest on Choctaw funds improperly charged to the Cherokee national

funds. It has demanded and received much attention both of Congress and of the Department of the Interior, and in one phase or another has provoked much litigation in the Federal courts. With a view of putting an end to the controversy Congress, by an act approved July 1, 1902 (32 Stat. L., 716), conferred jurisdiction upon the Court of Claims to consider and adjudicate the matter with a right of appeal to the Supreme Court of the United States by any party in interest feeling aggrieved at the decision of the former court, further providing in said act "that any such suit shall on motion of either party be advanced on the docket of either of said courts and be determined at the earliest practicable time."

By section 63 of the act of Congress of July 1, 1902 (32 Stats., 716, 725), it is provided that—

The tribal government of the Cherokee Nation shall not continue longer than March 4, 1906.

As the Cherokee Nation in its tribal capacity is a party to this cause, it is deemed desirable in furtherance of the evident intent of Congress as expressed above that this litigation should be settled before the last-mentioned date, if possible.

Judgment was rendered in the Court of Claims in favor of the claimant, the Cherokee Nation, and against the United States in a sum of money calculated to be in excess of \$4,000,000. Upon the principal item of the claim, which was for the sum of \$1,111,284.70, the judgment of the Court of Claims

allowed interest at the rate of 5 per cent per annum, amounting at the date of the judgment to more than \$3,000,000, and under the judgment interest continues to run at the specified rate.

For the purpose of determining the litigation, of obtaining a speedy disposition of the matter, and of putting an end to the ever increasing interest obligation on this large amount, it is respectfully prayed that this motion to advance be granted.

All parties to the above causes concur in this motion.

HENRY M. HOYT,

Solicitor-General.

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1 SUPREME COURT OF THE UNITED STATES.

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THE UNITED STATES.

We, the undersigned, attorneys in the above-entitled causes, agree that the attached intervening petition in suit No. 23199, of date December 22, 1903, may be filed in this appeal to complete the record.

L. A. PRADT,
Assistant Attorney-General.
F. D. MCKENNEY,
Atty. for Cherokee Nation.
ROBT. L. OWEN,
R. V. BELT,
W. H. ROBESON,
Attys. for the Eastern Cherokees.

2 In the United States Court of Claims.

THE CHEROKEE NATION, CLAIMANT, }
vs. } No. 23199, genl. dock. 32.
THE UNITED STATES, DEFENDANT. }

Motion and petition to intervene and to consolidate suits Nos. 23199, 23212, and 23214.

Your petitioners, composed of about 4,500 Eastern and Emigrant Cherokees, more or less, pray this honorable court for leave to intervene in the above-entitled cause for the following reasons:

1. They are interested in the subject-matter of this suit and believe themselves to be entitled in proportion to their numbers to one-fifth or

more of the the \$1,111,284.70 asked for, with interest thereon at 5% from June 12, 1838, the whole of which is being claimed by the plaintiff in the above cause.

2. Your petitioners filed in this court March 10, 1903, an independent suit, No. 23212, general docket, asking for this one-fifth interest, in which they would much prefer to be heard, but they did so without taking cognizance of the fact that the Cherokee Nation, so called, had already filed in this court, to wit, February 20, 1903, under act of July 1, 1902, the above-entitled suit which now, by reason of its date of filing, has precedence on the docket and may be taken up and considered to the detriment of your petitioners before their cause No. 23212 is reached.

3 beside raising the question, to which they would not be able to respond, of their right to file a suit at all, if, as they claim, the Cherokee Nation only named in "The agreement" has a right to bring suit; or if your petitioners are not an organized tribe or band within the contemplation of the act under which they have filed.

3. The Cherokee Nation, as such, has never recognized in the distribution of its lands, or funds, the Eastern Band of Cherokee Indians of North Carolina, so called (now only a corporation), and much less any of the Cherokees who have segregated themselves from said band either in said State or the adjoining States, many of whom are numbered among your petitioners, and many of whom have gone west to the Indian Territory, and have remained there for years and have failed to get recognition as citizens of the nation, often on account of jealousy of the number of allottees claiming enrollment, although the proofs of their Cherokee blood was duly filed with the "Commission."

4. Besides this, there was filed in this honorable court on March 14, 1903, a third suit, No. 23214, general docket, asking for the same fund, by The Eastern Cherokees vs. The United States and the Cherokee Nation, claiming under act of March 3, 1903, but representing only in part your petitioners, who, having failed to get their allotments, or any portion of the money distributed from the sale of the Cherokee strip, do not now wish to lose their share or pro rata of the second item of "the award" of money improperly taken from the five million fund, a fund created by the sale of their ancestral homes; whose parents were parties to the treaty of New Echota, and whose names are on the roll of 1835.

5. There are now, as stated, three suits filed in this honorable court, all claiming the same subject-matter, and the act of March 3, 1903, indicates that all suits of this nature shall be consolidated and tried together, but this suit, No. 23199, was filed before this legislation was enacted, and the petitioners are not, therefore, bound by it, as the legislation is not retroactive, and they may not choose to be controlled by it.

Prayer.

Wherefore your petitioners pray not only that they may be allowed to intervene in suit No. 23199, in order to be insured a hearing, and that their rights may be protected, but that the three suits, Nos. 23199, 23212, and 23214, general docket, may be consolidated, so that their proofs and arguments already filed in No. 23212 may become available, and the rights of Eastern Cherokees as represented in suit No. 23214, not fully

comprehended in the other suits, may also be considered, and a joint hearing had of all the parties in interest.

Requests for findings of fact and briefs have been duly filed in the three suits.

BELVA A. LOCKWOOD,
Attorney for Eastern and Emigrant Cherokees.

5 CITY OF WASHINGTON, *District of Columbia, ss:*

Personally appeared before the undersigned, a notary public in and for the District of Columbia, Belva A. Lockwood, whose genuine signature is subscribed to the above petition, who, being sworn in due form of law, deposes and says: "I have read the above petition by me subscribed and know the contents thereof, and the facts therein stated upon my personal knowledge are true, and those stated on information and belief I believe to be true; and that I have authority under seal to sign the names of and to represent in this cause each and every one of the petitioners sought to be represented herein."

BELVA A. LOCKWOOD,
Attorney for Eastern and Emigrant Cherokees.

Sworn and subscribed before me, this 22d day of December, 1903.

[SEAL.]

JAY G. WILSON,
Notary Public.

Filed Dec. 22, 1903.

A true copy of the original filed in the Court of Claims in case numbered 23199, on the 22d day of December, 1903.

Test this 20th day of October, A. D. 1905.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsed:) File Nos. 19848, &c. Supreme Court U. S. October term, 1905. Term Nos., 346, 347, and 348. The United States, appellant, v. The Cherokee Nation; The Eastern Cherokees, appellant, v. The Cherokee Nation; The Cherokee Nation, appellant, v. The United States. Stipulation of counsel and addition to record. Filed Nov. 10th, 1905.

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JAMES H. MCKENNEY,
Clerk.

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THE UNITED STATES.

APPEALS FROM THE COURT OF CLAIMS.

**Motion on Behalf of the United States and the
Cherokee Nation to Enlarge the Time for Argu-
ment and to Designate the Order Thereof.**

Now come The United States and The Cherokee Nation,
parties to the above-entitled causes, and, referring to the
order of this honorable court heretofore passed herein

advancing the above causes and assigning same for argument on January 2, 1906, "as one cause," respectfully move the court as follows:

1. That the time for argument of said causes be enlarged so as to allow at least three hours to each party appearing upon the record.

2. That each party may be heard by two counsel, if so desired.

3. That this court will designate the order in which counsel for the respective parties appellant shall be heard.

As ground for such motion and each subdivision thereof the attorneys for the moving parties respectfully state as follows:

First. That by section 68 of the act of Congress of July 1, 1902 (32 Stats., 726), jurisdiction was conferred upon the Court of Claims to adjudicate "any claim which the Cherokee tribe or any band thereof, arising under treaty stipulations, may have against the United States," and a right of appeal to this court was likewise conferred upon any party in interest feeling aggrieved at the decision of the Court of Claims in the premises.

Second. Under the provisions of such statute the Cherokee Nation, by its duly authorized attorneys, on February 20, 1903, filed its petition in the Court of Claims asking judgment against the United States upon four separate items, including among the others a certain item in the sum of \$1,111,284.70, with interest thereon at 5 per cent. per annum from June 12, 1838, to date of payment. Said petition was docketed as number 23,199 on the general jurisdiction docket of said court.

Third. By an act of March 3, 1903 (32 Stats., 996), the Congress declared that said section 68 of said act of July 1, 1902, should "be so construed as to give the Eastern Cherokees, so called, including those in the Cherokee Nation and those who remained east of the Mississippi river, acting together or as two bodies, as they may be advised, the status of a band or bands, as the case may be, for all the purposes of said section."

Fourth. Thereafter, on March 10, 1903, a petition was filed and docketed in said Court of Claims as number 23212, general jurisdiction, on behalf of certain so-called "Eastern and Emigrant Cherokees" "residing for the most part in Cherokee, Graham, Swain, and Macon counties, in North Carolina," and elsewhere. By said petition claim was made on behalf of a considerable number, stated at 3,500 individuals, against the United States to recover by judgment in their favor a proportionate share of the item of \$1,111,284.70 and interest, above referred to.

Fifth. On March 14, 1903, a further petition was filed and docketed in said Court of Claims as number 23214, general jurisdiction, on behalf of "the Eastern Cherokees," whereby judgment was prayed against the United States in favor of said "The Eastern Cherokees" for the full amount of said item of \$1,111,284.70 and interest.

Sixth. To each of said petitions the United States filed a general traverse, and upon motion of the Assistant Attorney General the several claimants above named were "required to interplead," and the causes were ordered to "be consolidated and brought to trial as one case without prejudice to the several rights of the parties claimant."

Seventh. Said consolidated causes having been argued and submitted to the Court of Claims, said court, on May 18,

1905, entered a judgment in favor of the Cherokee Nation and against the United States for the entire amount claimed by the former upon each of the four items specified in its petition, including said item of \$1,111,284.70 and the interest thereon.

Eighth. In entering its judgment in favor of the Cherokee Nation the Court of Claims directed that the amounts found to be due to said nation upon three of the items claimed, including said item of \$1,111,284.70 and interest, should be paid to the Secretary of the Interior, to be by him distributed to the persons entitled thereto in accordance with the detailed terms of the judgment of said court.

Ninth. From said judgment in its entirety the United States has prayed their appeal to this court.

"The Eastern Cherokees" have appealed from so much thereof as directed judgment in favor of the Cherokee Nation, while the latter has appealed solely from so much of said judgment as provided that "the sum of \$1,111,284.70, with interest thereon from June 12th, 1838, to date of payment, less certain counsel fees and expenses," should be paid to the Secretary of the Interior, to be by him distributed to persons found to be equitably entitled thereto.

From the foregoing statement it will appear that this contest is at least a three-sided one; that the Cherokee Nation, the Eastern Cherokees, and the Eastern and Emigrant Cherokees all claim a right of recovery as against the United States, in so far as the item of \$1,111,284.70 and interest thereon from June 12, 1838, is concerned, and to that extent all are jointly concerned in the outcome; but while the Cherokee Nation claims the right to recover as a political body for the benefit of all of its component members, including "The Eastern Cherokees" and "The Eastern and

Emigrant Cherokees," said "Eastern Cherokees" and "the Eastern and Emigrant Cherokees" claim the right and benefits of such recovery to the exclusion of a large body of Indians forming component elements of the Cherokee Nation.

The rights and obligations of the parties to this triangular controversy depend upon the construction and application of the provisions of a series of treaties between the United States and the Cherokee Nation and the United States and the "Eastern Cherokees" and the "Western Cherokees" or "Old Settlers," and also upon the terms of a long series of statutes of the United States enacted in furtherance of said treaties.

If there were no differences between the Cherokee Nation and the Eastern Cherokees, it would hardly be possible within the limits of the four hours allotted to the consolidated causes to properly and adequately make known to this court the many grounds of difference between the United States and the Cherokee Nation upon which the right of the latter to maintain its judgment against the former depend.

In view of the controversy between three claimants, which is subordinate in name only to the general claim of all against the United States, adherence to the rules usually governing the argument of causes in this court would not only possibly prevent important contending interests from being heard by counsel at all, but would render impossible any adequate presentation of the equities of such contending parties growing out of and based upon the alleged contemporaneous construction and administration of the treaties of 1835 and its supplement of 1836 and the treaty of 1846, all between the United States and the Cherokees, and the acts of Congress in furtherance thereof.

It is therefore respectfully requested that three hours of time may be granted to each of the three parties appellant, and that each may be heard by two counsel, if so desired.

In view of the importance of these cases to the parties claimant, the many years which have elapsed since the controversy involved was initiated, and the large amount involved, for which judgment has been given against the United States, it is confidently hoped that the extension of time requested will not be deemed unreasonable or illy founded.

Counsel representing the various contending parties have been unable to agree among themselves as to the order in which their respective arguments shall be submitted to this court.

Notwithstanding the settled rule or practice of this court in cases involving appeals and cross-appeals, counsel for the United States contends that as the judgment in question is against the United States and in favor of the Cherokee Nation for the full amount claimed by the latter, and that as the appeal by the former was from the judgment in its entirety, the right to both open and close the series of arguments belongs to the United States. To this counsel for the Cherokee Nation assent, and it is understood that counsel for The Eastern Cherokees do not strenuously contend otherwise.

As the judgment in its entirety must be defended by the Cherokee Nation, counsel for that body suggest that logically the opening argument on behalf of the United States should be followed by the opening in reply on behalf of the Cherokee Nation. As the claim of "The Eastern Cherokees" and "The Eastern and Emigrant Cherokees" involves but a single one of the items included in the judgment appealed from, and also involves the single question as to whether the judgment against the United States, if sustained by this court, should remain in favor of the Cherokee Nation, or be modified so as to run in favor of said "Eastern Cherokees" or "The Eastern and Emigrant Cherokees," or either of them, it would seem that the argument in their behalf logically should follow the opening on behalf of the Nation, with

a right of reply in the latter, the entire argument to be closed by counsel for the United States.

It is understood that the contentions of counsel for The Eastern Cherokees in this connection will be laid before the court in a separate motion paper.

LOUIS A. PRADT,

Assistant Attorney General.

CHARLES NAGEL,

EDGAR SMITH,

FREDERIC D. MCKENNEY,

Attorneys for the Cherokee Nation.